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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1649 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

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GUJARAT STATE ROAD TRANSPORT CORPN.

Versus

GORDHANBHAI P. PRAJAPATI

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Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR HK RATHOD for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 05/08/98

ORAL JUDGEMENT

Rule. Mr. H.K.Rathod learned advocate for the respondent waives service of notice of Rule on behalf of the respondent.

2. Gujarat State Road Transport Corporation(GSRTC) has filed the present petition to challenge the award passed by the Labour Court, Ahmedabad in Reference No.

3. The respondent Gordhanbhai P.Prajapati was working as a conductor with the petitioner. On 22.2.94 when he was on duty as conductor of ST bus bearing no. 6442 which was plying between Dehgam and Chagala, the said bus was checked and at the time of checking of the said bus, it was found that the respondent conductor had recovered Rs. 31 towards the fare of 22 passengers but had not issued tickets to them. The checking party has recorded his statement on the spot and in the said statement it was stated by the respondent conductor that his bus was very late and therefore, he could not issue tickets before allowing the passengers to board the bus. He also stated that when the raiding party had entered the bus, a quarrel was going on between him and the passengers as there were in fact 22 passengers though it was claimed by the leader of groups/passengers that there were only 20 passengers. He had also submitted that there was no intention on his part to commit misappropriation. It is submitted by him that while he was in the process of issuing the tickets, the bus was checked. The checking party made a report to that effect. Thereafter, departmental inquiry was held against the present respondent. In the said departmental inquiry said misconduct was held to be proved and by the order dated 5.8.94, the respondent was dismissed from service.

4. As the respondent was dismissed from service, the respondent conductor raised an industrial dispute which resulted into Reference No. 385 of 1985. Before the Labour Court the legality and validity of the departmental inquiry was not challenged and only the findings recorded by the inquiry officer were challenged and thus the challenge was towards the punishment awarded to the delinquent employee. The Labour Court found that in the departmental inquiry, the respondent was rightly held to be guilty of the misconduct alleged against the delinquent employee. However, the Labour Court found that the punishment of dismissal awarded to the respondent was disproportionate to the misconduct committed by him. The Labour Court therefore, interfered with the punishment and ordered reinstatement of the respondent-conductor without any back wages. Said award is challenged by preferring the present petition.

5. Ms. Vasavadatta Bhatt learned advocate for the petitioner vehemently urged before me that it is a clear case of misappropriation. She further submitted that it has been repeatedly laid down by this Court that

misconduct of misappropriation is graver and serious misconduct and no leniency could be shown in matter of such serious misconduct of misappropriation. She cited before me a decision of Division Bench of this Court in the case of Gujarat State Road Transport Corporation vs. K.M.Parmar reported in 34 (1993)(1) GLR 302 and relied upon the following Head Note.

" Under Sec.11A of the Industrial Disputes Act the Industrial Tribunal or the Labour Court is not having unguided power to set aside the justified order passed by the management. The power under sec.11A has to be exercised judicially and the Industrial Tribunal or Labour Court can interfere with the decision of the Management under Sec.11A of the Act only when it is satisfied with the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. This Court has repeatedly held that misappropriation, if held established, would be a major misconduct and normally dismissal order passed by the competent authority should not be interfered with by the Labour Court or the Industrial Court under Sec.11A of the Industrial Disputes Act."

6. There could not be any dispute about the above stated proposition by the Division Bench of this Court. But said principles or observations will have to be taken into consideration along with the facts of that case. In para 2 of the said judgment, the misconduct alleged against the conductor has been stated as under:

"(i) He had issued tickets to 15 passengers for the fare of Rs.2/- each which were issued by him in his previous trip which started at 13.15 hours between Himatnagar and Gokalpura. That means he has re-issued 15 tickets.

(ii) He had also not issued tickets to passengers even though he had recovered fare from them.

(iii) He had issued 3 tickets in such a manner that they can be re-issued in subsequent trip;

(iv) He had not issued tickets to all 4 persons"

Now if the above mentioned charges levelled/alleged against respondent employee of that case, are considered then it would be quite clear that charges nos 1 and 3 of

the said charges clearly indicate that there was misappropriation by the conductor. In the first instance, he had reissued the tickets which were used by him in the earlier trip. When he make use of 15 tickets which he had issued in the earlier trip, then it is obvious that he misappropriated the fare of those 15 tickets. Similarly he had issued the tickets in such a manner that he wanted to misappropriate the fare of those tickets by again making reuse of the same. Now the charge against the present conductor is that he had received fare from 22 passengers and he had not issued tickets to them. There is no dispute of these two facts viz. that he had received the fare from 22 passengers and had not issued tickets to them. But from the facts and circumstances which have come in the departmental inquiry, could it be said that said two undisputed facts have proved that there was any misappropriation by the present respondent-conductor ?. Admittedly, the bus was checked when the conductor was in the process of issuing tickets. The statement of the conductor was recorded on the spot, copy of which has been produced at page 36 of the affidavit in reply. In the said statement which was recorded immediately on the spot, the respondent conductor stated that when the raiding party had entered the bus, a quarrel was going on between him and the passengers and the quarrel was over number of the passengers as to whether they were 20 or 22 and when he was about to issue the tickets, the raiding party had come to check his bus. Now this statement was given by the conductor immediately on the spot. Therefore, it could not be said that that what is stated by him was after thinking over the matter. It is also brought out in the cross examination of the reporter who was examined in the departmental inquiry that the claim made by the conductor that when the raiding party entered the bus there was a quarrel going on was not a false claim. It must be further mentioned here that in his examination the reporter had also clearly stated that the bus was checked by them within a distance of 2 kms. after the passengers had boarded the bus. Therefore, these circumstances must be borne in mind while considering two admitted facts. In the bus there were more than 22 passengers and fare was received from them. From the above facts the only inference at the most which can be drawn in favour of the corporation and against the delinquent is that there was only a preparation for misappropriation. Preparation for misappropriation will not amount to either misappropriation or an attempt to misappropriate. Therefore, in the facts and circumstances of the case before me, I am unable to hold that there was misappropriation by the respondent

conductor . When there is no misappropriation by the respondent conductor, it could not be said that he has committed a graver misconduct.

7. No doubt as per the Rules of the Corporation, a conductor is supposed to allow to ply the bus only after he has completed the booking of the tickets. So that Rule is not adhered to by the conductor. Even as regards this, the explanation given by the conductor was that, it happened because the bus started late. Now therefore, the misconduct which is proved against the respondent conductor is the misconduct of only non issuing of the tickets but I am unable to hold from the above facts that the respondent conductor has misappropriated any amount. Therefore, in the circumstances the decision of the Division Bench of this Court rendered in K.M.Parmar's case (Supra) is not applicable to the facts of the case before me.

8. Mrs. Bhatt for the petitioner further urged before me that the Labour Court had not also taken consideration the service record of the respondent which is produced by her At Annexure.C to the petition. Said service record shows that the respondent has committed 27 defaults. She has submitted that when the respondent had committed 27 defaults, to allow him to continue in service would be improper and unjust. Therefore, it is necessary to go through the record in order to find out as to whether in those 26 defaults, he had committed any serious misconduct. If all the misconducts which are recorded and mentioned in the said record are considered, then it would be quite clear that most of the misconducts there were charge against the present respondent that the respondent had not issued tickets to a single passenger in the bus. But it is not a charge that he had not issued ticket inspite of receiving fare. Now it is a common experience that ST buses are always over crowded. When the buses are over crowded, it is quite possible that the conductor may commit a mistake in not issuing tickets. As the same time it must be also mentioned here that under the Motor Vehicles Act, it is not only the duty of the conductor to issue the tickets to the passengers but it is also the duty of the passengers not to travel in the bus with out obtaining tickets. Travelling without ticket is a criminal offence. It is necessary to mention that in all the misconducts, the respondent was punished by the corporation even by giving punishment of warning and to be more careful in future and on few occasions asking him to pay fine ranging between Rs. 3 to 10 clearly show that the misconducts

committed by the delinquent on various occasion were not at all serious. It seems that for the first time, a conductor who has put in 17 years service is found to have received fare from the passengers in the bus and had not issued tickets and on the materials on record, I am unable to hold that it was a case of misappropriation or even an attempt for misappropriation. Therefore, in the circumstances, merely because there were 27 defaults on the earlier occasion, it could not be said that the order of dismissal from service was justified.

9. After amendment of section 11A of I.D.Act, it is now clear that the position which was prevailing before the amendment of section 11A of I.D.Act viz. that the Tribunal cannot have satisfaction regarding justification of the punishment awarded by the employer, is not in existence. It is settled law that it is open for the Tribunal to decide the question of punishment in the circumstances of the case before it. The Labour Court has taken into consideration the record of the departmental inquiry and has come to the conclusion that the punishment of dismissal from service was not justified. In view of the aforesaid facts and circumstances, it could not be said that the conclusion arrived at by the Labour Court is in any way illegal or erroneous resulting into miscarriage of justice so as to interfere with the same in exercise of the powers under Articles 226/227 of the Constitution of India.

10. No doubt the conductor has committed an error in not issuing tickets though he has received the fare and he has also committed a misconduct in not following the Rules of the corporation of allowing the bus to ply without fully booking the tickets. But for that misconduct I am unable to hold that punishment of dismissal is adequate or proper. No doubt the conductor-workman must be awarded punishment for his misconduct. He should not be allowed to go scot free for the misconduct proved against him.

11. The Labour Court has taken into consideration this aspect in mind while modifying the order of punishment and the Labour Court has denied the back wages to the respondent from the date of dismissal till the date of the award. (the period between 5.8.84 and 24.4.97). In the normal course he would have been entitled to get back wages when there was a direction to reinstate the respondent in service. However there has been denial of back wages for 3 years by way of

punishment for the admitted and proved misconduct. Therefore, taking into consideration this modification of the punishment and further fact that the petitioner is a public corporation I will add further punishment by denial of back wages to the conductor from the date of award till the date of reinstatement which should take place on or before 31.8.1998. Thus I hold that present SCA deserves to be rejected and the same is rejected accordingly. The petitioner corporation is directed to reinstate the respondent workman on or before 31.8.1998 without any back wages but with continuity of service and other benefits . Rule discharged. In the circumstances parties to bear their own costs.

(S.D.Pandit.J)